

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

December 1, 2005

A meeting of the Board of Environmental Protection was held on Thursday, December 1, 2005, at the Holiday Inn / Ground Round, Augusta, Maine. Matthew Scott, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler

Absent: Donald Guimond

Note: Board member Denis Culley arrived at approximately 10:30 a.m.

<u>Staff:</u>	Bureau of Land and Water Quality	Mike Mullen
	Bureau of Land and Water Quality	Judy Gates
	Bureau of Land and Water Quality	Mary Pierce
	Bureau of Air Quality	Marc Cone
	Bureau of Air Quality	Lynne Cayting
	Bureau of Air Quality	Ron Severance
	Bureau of Air Quality	Jeff Crawford

Others: David P. Littell, Deputy Commissioner
Jerry Reid, Assistant Attorney General [for Chapters 127, 100, 115 and 140]
Peggy Bensinger, Assistant Attorney General [for Chapters 335 and 375]
Mary Sauer, Assistant Attorney General [for appeal, Town of Hodgdon]
Cynthia S. Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Farewell to Board member Wilkinson: Deputy Commissioner Littell presented Jean Wilkinson with a plaque to honor her 8 years of dedicated service to the Board noting that her unique perspective on matters before the Board would be missed.

Gulf Island Pond: Commissioner Gallagher has removed herself from future matters dealing with Gulf Island Pond. As of Tuesday, those duties have been assigned to the deputy commissioner. One of the first steps taken by the Department was to notify International Paper that the Department wants to reopen the license to address phosphorus. I will be providing the Board with regular updates on this matter in the future.

Hampden Landfill: Yesterday Department staff responded to a fire at the Hampden landfill. Staff reported that the fire was subsurface and was the result of a broken pipe in the methane collection system.

Questions: Board member Nancy Anderson asked if there have been any requests for Board jurisdiction regarding the pending application of the Gen Power project in Athens.

The Department confirmed the receipt of approximately 30 letters requesting a public hearing and Board jurisdiction. The deadline for submittal of requests for jurisdiction is December 5th. The Commissioner has replied to the citizens requesting jurisdiction communicating that the Department will provide a preliminary determination after the deadline.

A follow-up question from Ms. Anderson: Is the application by GenPower for an air emission license only?

The applicant will also need a permit for the beneficial use of construction demolition debris material proposed as a fuel source for the facility. That application has not been made yet.

Questions: Board member Virginia Plummer expressed a desire to have a workshop regarding proposed rule amendments associated with Beneficial Use (Chapters 418, 409, 405 and 402) stating a need for additional information in the following areas: 1) State of Maine's solid waste policy, 2) status of task force on solid waste 3) a need to have an overall understanding of the scope of use of CDD as a fuel source including air emission controls and 4) follow-up to specific questions raised during the hearing process.

Board member Ernest Hilton also expressed an interest in state solid waste policy, and why other states are not opting to use CDD as a fuel source while Maine is considering permitting a facility to use 100% CDD.

Board member Nancy Anderson noted that the current schedule for adoption of the proposed amendments to Chapter 418 would not allow enough time to address the conflicting testimony.

The Deputy Commissioner noted that the written comment period expired on November 28, 2005. The Department has discussed scheduling a deliberative session with the Board's analyst and has confirmed that such a session could be held without reopening the record because the information requested by Board members is part of the Department's record on this rulemaking initiative. Additionally, the reason for the previous adoption schedule was to have the ability to review applications under these new rules to realize the environmental benefits. From an energy source perspective, the Deputy Commissioner noted that the PUC (Public Utilities Commission) is concerned about the potential for energy shortfalls and the beneficial use of CDD would help with an energy shortfall and avoid burning of virgin wood. The proposed rules will improve the standards for burning of wood from CDD and other activities.

DEP will provide information on what other states are doing and answer the question regarding the 100% burn of CDD. At this point, we believe that other states have not conducted studies similar to the Boralex study and may not have good data on use of CDD as a fuel. A representative from NH attended our hearing to learn what Maine is doing.

The Board's Executive Analyst asked Board members to provide specific issues/questions pertaining to the proposed rule amendments to her by Monday and noted that if the Board wishes to reopen the record there are timing issues on this process.

Board member Virigina Plummer asked about the status of the appeals of the discharge licenses for facilities on the Androscoggin River now that the side agreements have been rescinded and the Department wants to reopen the International Paper license.

The Board's Executive Analyst responded communicating that a total of 14 appeals were received. A conference was held on November 30, 2005 to discuss schedule and consolidation of those appeals. The appeals related to the side agreements are now moot due to the recent action by the Department to rescind them. The Department wants to revisit the IP license based on new information to determine if different discharge limits are needed. The Department is going to file a motion with the Chair on December 16th explaining its intent to reopen the IP license. All other parties have until January 9th to respond to the motion. The Chair will evaluate all and make a determination on the matter.

Board member Hilton asked about the likelihood of the Board hearing the matter of the Department's motion.

The Deputy Commissioner communicated that International Paper has indicated that they would request a hearing on the reopening of its license. The Department understands that any such request by IP would likely include a request for a Board's hearing.

Assistant Attorney Jerry Reid disclosed that he has been assigned to work with the Department in an advocacy capacity. Peggy Bensinger and Jeff Pidot will counsel the Board on this matter.

CHAIRMAN'S COMMENTS: NONE

B. EXECUTIVE ANALYST COMMENTS:

The Board may need to consider scheduling an additional meeting to address the petitions to modify the water quality certifications of several hydropower projects located on the Kennebec and Androscoggin Rivers. One of the petitioners asked the Board to postpone consideration of its petition; however, the other petitioner wishes to have his petition heard. Please give some thought to possible additional meeting dates in January. At this point, the Board has only one regular meeting on January 19th.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

Board member Nancy Anderson asked for more detail on the amendment of the FPLE Wyman Station permit noting that the descriptive phrase on the report is unclear.

Marc Cone explained that FPLE currently has an air emission license. The pending application modifies the means of documenting compliance with some requirements, changing from documentation of fuel use to monitoring emissions.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

At the November 17th regular meeting, the Board tabled action on the consent agreements regarding Jon and Rebecca Hyvonen and Louis Nicholas and directed the Department to provide additional information regarding penalty amount and the status of any pending permit for after-the-fact approval of the project.

Department staff person Mike Mullen explained the penalty matrix and confirmed that the house will be relocated to an upland area on the project site eliminating the need for an after-the-fact permit application.

Board member Ernest Hilton asked about other options besides moving the house.

The Department explained that because upland area is available on the project site, any permit issued by the Department would require relocating the house in an upland location because the standard of "avoidance" of wetland impacts could not be met.

The Board will consider the Hyvonen and Nicholas consent agreements at its December 15, 2005 Board meeting.

The Board voted (7-0-0-2) on separate motions on 1 through 5.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motions. Board members Denis Culley and Donald Guimond were absent.

1. DAVID W. HASSON, Portland - Administrative Consent Agreement and Enforcement Order (BLWQ - Water)
The Board voted on a motion to approve as presented (7-0-0-2)
2. IRVING OIL CORPORATION, Searsport – Administrative Consent Agreement (BAQ)
The Board voted on a motion to approve (7-0-0-2)
3. ROY WING and MARGARET HARRINGTON, Manchester – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
The Board voted on a motion to approve (7-0-0-2)
4. STEPHEN SHEPHARD and KATHRYN SHEPHERD, Hallowell – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
The Board voted on a motion to approve (7-0-0-2)
5. CONLITE, INC., Westbrook – Administrative Consent Agreement and Enforcement Order (BRWM)
The Board voted on a motion to approve (7-0-0-2)

III. Regular Agenda

1. CHAPTER 100, DEFINITIONS / CHAPTER 115, MAJOR AND MINOR SOURCE AIR EMISSION LICENSE REGULATIONS / AMENDMENT / CHAPTER 140 PART 70 AIR EMISSION LICENSE REGULATIONS / AMENDMENT (adoption)
Staff: Marc Cone, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to adopt Chapter 100, Definitions, Chapter 115, Major and Minor Source Air Emission License Regulations and Chapter 140, Part 70, Air Emission License Regulations amendments as presented. The vote was taken pursuant to 38 M.R.S.A Sections 341-D and 585-A.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Donald Guimond was absent.

2. CHAPTER 127, NEW VEHICLE EMISSION STANDARDS / AMENDMENT (adoption)
Staff: Lynne Cayting, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to adopt Chapter 127 New Vehicle Emission Standards (Greenhouse Gas Vehicle Emission Standards) amendment as presented to include the minor modifications outlined in the Errata sheet correcting the list of

commenters. The vote was taken pursuant to 38 M.R.S.A. Sections 341-D, 585, 585-A and 585-D.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Donald Guimond was absent.

3. CHAPTER 335, SIGNIFICANT WILDLIFE HABITAT / AMENDMENT (provisional adoption)

Staff: Judy Gates and Mary Pierce, Bureau of Land and Water Quality

The Board voted (8-0-0-1) on a motion to provisionally adopt amendments to Chapter 335 Significant Wildlife Habitat modified as follows:

Section 9C(2). Location of pool. ~~A permit is required however~~ This provision does not apply if the significant vernal pool

Section 9B(6) Voluntary identification. An individual or entity may..... vernal pool. ~~on that individual's property.~~

Section 10B(1). Aquatic bed habitat. ...eelgrass (*Zostera marina*) beds ~~currently~~ as mapped by Maine....

Section 3.D. Compensation (1) in some instances the department may determine that off-site compensation may be used or is preferable to offset the impacts of the project.

The vote was taken pursuant to 38 M.R.S.A. Sections 341-D and 480-A to 480-Z.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Donald Guimond was absent.

4. CHAPTER 375, NO ADVERSE ENVIRONMENTAL EFFECT STANDARD OF THE SITE LOCATION LAW, SECTION 15. WILDLIFE AND FISHERIES / AMENDMENT (adoption)

Staff: Judy Gates and Mary Pierce, Bureau of Land and Water Quality

The Board voted (8-0-0-1) to on a motion to adopt amendments to Chapter 375 No Adverse Environmental Effect Standard of the Site Location Law, Section 15 as presented.

The vote was taken pursuant to 38 M.R.S.A. Section 341-D.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Donald Guimond was absent.

5. CONTINUE W/PROCESS / ROLE DISCUSSION (as time allows)

Staff: Cynthia Bertocci, Board of Environmental Protection

A work session to discuss Board process was held following consideration of the appeal of the Town of Hodgdon Municipal Septage Management Compliance License.

BOARD RECONVENED AT 1:30 TO CONSIDER THE REMAINDER OF THE REGULAR AGENDA:

6. MUNICIPALITY OF HODGDON S-022224-SI-A-N / MUNICIPAL SEPTAGE MANAGEMENT COMPLIANCE LICENSE (appeal by Stacy Tidd)
Staff: Jay Duncan, Bureau Remediation and Waste Management.

The Board voted (8-0-0-1) on a motion to deny the request for a public hearing and deny the appeal filed by Mr. Stacy Tidd, affirm the Commissioner's decision and approve the draft proposed Board order. The vote was taken pursuant to 38 M.R.S.A. 341-D and 06-096 CMR Chapter 2.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Donald Guimond was absent.

BOARD OF ENVIRONMENTAL PROTECTION
Holiday Inn / Ground Round, Augusta at 10:00 a.m.
November 17, 2005

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

ADMINISTRATIVE CONSENT AGREEMENT:
Proposed wastewater discharge enforcement resolution open for public comment
Pursuant to 38 M.R.S.A. §347-A(6)

David W. Hasson, Portland
7695)

(Staff: Phil Garwood 287-

Tentatively scheduled for Board action on December 1, 2005

Maine Coast Memorial Hospital, Ellsworth
287-8898)

(Staff: James Crowley

Tentatively scheduled for Board action on January 5, 2005

II. CONSENT AGENDA ITEMS

1. CUMBERLAND FARMS, INC., North Berwick, South Berwick, Wells, Saco, Groham, Portland - Administrative Consent Agreement and Enforcement Order (BAQ)
2. REST A WHILE REALTY TRUST, Wells – Administrative Consent Agreement (BLWQ – Land)
3. JON B. HYVONEN and REBECCA T. HYVONEN, Willimantic – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
4. LOUIS F. NICHOLAS d/b/a LOUIS F. NICHOLAS MASONRY, Willimantic – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)

III. REGULAR AGENDA ITEMS

1. CHAPTER 355, COASTAL SAND DUNE RULES (provisional adoption)
Staff: Jeff Madore, Bureau of Land and Water Quality
2. FOLLOW-UP PROCESS / ROLE DISCUSSION (as time allows)
Staff: Cynthia Bertocci, Board of Environmental Protection

BOARD TO RECONVENE AT 1:30 TO CONDUCT RULEMAKING PUBLIC HEARING(S):

Chapter 418, Beneficial Use of Solid Waste
Chapter 409, Processing Facilities
Chapter 405, Water Quality Monitoring, Leachate Monitoring, and
Waste Characterization; and

Chapter 402, Transfer Stations and Storage Sites for Solid Waste